

EXHIBIT 17

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Friday, May 1, 2009

- - -

Oral deposition of PETER VAN
N. LOCKWOOD, ESQUIRE, taken pursuant to
notice, was held at the offices of CAPLIN
& DRYSDALE, One Thomas Circle N.W., Suite
1100, Washington, DC 20005, commencing
at 9:43 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -

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<p>1 - - -</p> <p>2 DEPOSITION SUPPORT INDEX</p> <p>3 - - -</p> <p>4</p> <p>5 Direction to Witness Not to Answer:</p> <p>6 Page Line Page Line</p> <p>7 NONE</p> <p>8</p> <p>9</p> <p>10 Request for Production of Documents:</p> <p>11 Page Line Page Line</p> <p>12 NONE</p> <p>13</p> <p>14</p> <p>15 Stipulations:</p> <p>16 Page Line Page Line</p> <p>17 12 02</p> <p>18</p> <p>19</p> <p>20 Area(s) Marked Confidential:</p> <p>21 Page Line Page Line</p> <p>22 152 01 through 168 03</p> <p>23 292 01 through 311 14</p> <p>24</p>	<p>1 as the Rule 30(b)(6) designee for the</p> <p>2 ACC, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that is with respect to</p> <p>5 a number of 30(b)(6) notices, correct?</p> <p>6 A. A very large number, yes.</p> <p>7 Q. Can you look at the one</p> <p>8 that's been put before you and marked ACC</p> <p>9 Rule 30(b)(6)-1, which I will call ACC-1</p> <p>10 here after.</p> <p>11 A. I have it.</p> <p>12 Q. Can you identify it?</p> <p>13 A. It is an Amended Notice of</p> <p>14 Deposition of Asbestos PI Committee</p> <p>15 Pursuant to Rule 30(b)(6) served by four</p> <p>16 insurance companies, One Beacon, Seaton,</p> <p>17 Geico, and Columbia. And it contains an</p> <p>18 attachment with definitions and topics</p> <p>19 which are the subject matter of</p> <p>20 testimony.</p> <p>21 Q. Okay. And can you look at</p> <p>22 the document that I put before you that's</p> <p>23 marked ACC-2.</p> <p>24 A. I have it.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. And identify that document, 2 please. 3 A. That document is the 4 Objections of the Official Committee of 5 Asbestos Personal Injury Claimants to 6 Rule 30(b)(6) Notices of Deposition 7 served by Certain Plan Objectors. 8 Q. Okay. And is it correct 9 that you are here today prepared to 10 testify about the topics that are listed 11 in ACC-1 subject to the objections that 12 appear in ACC-2? 13 A. The answer to that question 14 is yes, subject to the following caveats: 15 To the extent that the topics in this 16 notice or any of the other notices are 17 subjects that the ACC has a person with 18 knowledge on, I am here to testify about 19 it. To the extent that the ACC doesn't 20 have a person with knowledge on certain 21 topics, then I am here to testify that 22 the ACC doesn't have knowledge on those 23 topics. 24 Q. Okay. And --</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Have you ever seen this 2 document before? 3 A. Frankly, I am not sure. 4 Q. Okay. 5 A. I may have. I may not have. 6 Q. All right. Why don't you go 7 to the back of the document, starting 8 with page 9. 9 A. Page 9 or page 8? 10 Q. I am sorry. Page 8. 11 A. I am there. 12 Q. Can you identify that 13 document? 14 A. It appears to be a copy of a 15 Term Sheet for the Resolution of Asbestos 16 Personal Injury Claims entered into by a 17 variety of parties, including the ACC. 18 Q. Okay. Have you seen the 19 Term Sheet, either this Term Sheet or 20 some iteration of it previously? 21 A. I have seen the original of 22 it. 23 Q. Okay. Can you take a look 24 at what you have before you and tell me</p>
<p style="text-align: right;">Page 15</p> <p>1 A. And to the extent that 2 occurs, we will see how it occurs in the 3 course of the questions. 4 Q. Okay. And then you 5 mentioned ACC and a person with the ACC. 6 How are you using the term 7 "ACC"? 8 A. I am using it as the entity 9 that was appointed in the bankruptcy case 10 by the U.S. Trustee. 11 MR. BROWN: ACC-3. 12 (ACC 30(b)(6)-3 marked for 13 identification at this time.) 14 BY MR. BROWN: 15 Q. Okay. Mr. Lockwood, you now 16 have before you a document that should 17 have two exhibit labels on it. One is an 18 Exhibit-12 from the deposition of 19 Mr. Finke, and the other is ACC-3. 20 Could you identify the 21 document that has been marked as ACC-3? 22 A. It appears to be a Form 8-K 23 file by W.R. Grace & Company dated April 24 6, 2008.</p>	<p style="text-align: right;">Page 17</p> <p>1 whether it differs in any way from the 2 original? 3 MR. FINCH: Objection. 4 THE WITNESS: On the face of 5 it, it does not appear to 6 different. I mean, obviously, a 7 comparison of the original and 8 this copy would be the definitive 9 way of determining whether there 10 is a difference, but this looks to 11 be the same, as best I can recall. 12 BY MR. BROWN: 13 Q. Okay. And this document was 14 negotiated by the parties that executed 15 it, is that correct, or their counsel? 16 A. Broadly speaking, yes. I 17 mean, negotiated implies human beings in 18 a room or in some communication, and 19 these are all entities. So various 20 representatives of the entities that are 21 listed here in negotiated this document 22 on behalf of their respective principals. 23 Q. Is there anything in the 24 Term Sheet that you can see that's</p>

1 to the extent that a coverage
2 court determines that there is a
3 pre-condition to coverage.

4 And since the Trust is the
5 one seeking the coverage, by
6 hypothesis, it's the only one that
7 has any incentive to make sure
8 that the rights or -- excuse me --
9 that the obligations, the
10 pre-conditions are satisfied as
11 required by a coverage court.

12 And so to that extent, yes,
13 the Trust, one way or another, to
14 the extent determined by a
15 coverage court or by negotiations
16 with insurers, will have to
17 perform what you have described as
18 the obligations and rights under
19 the assigned insurance coverage.
20 That's my understanding.

21 BY MR. BROWN:

22 **Q. Do the Debtors, the**
23 **Reorganized Debtors, retain any duties or**
24 **obligations under the asbestos insurance**

1 **policies if this Plan is confirmed?**

2 A. There are provisions
3 involving cooperation in the Plan
4 documents which would allow the Trust to
5 require, to the extent those cooperation
6 provisions say so, the Debtors to help
7 satisfy or wholly satisfy whatever the
8 particular requirement might be that only
9 the Debtor could do.

10 So there is, I guess, the
11 answer is there is an indirect obligation
12 on the Debtor's part. But the Debtor,
13 qua-Debtor, vis-a-vie, the insurer, since
14 the Debtor under the asbestos insurance
15 rights will not on its own be seeking
16 coverage, the Debtor sort of independent
17 of the Trust would not have any rights,
18 any obligations to the insureds except to
19 the extent, as I say, that the
20 cooperation with the Trust efforts to
21 access that insurance trigger such
22 cooperation obligations.

23 **Q. And the cooperation**
24 **obligations that you described in the**

1 **beginning of your answer are set forth in**
2 **the cooperation agreement; is that what**
3 **you were referring to?**

4 A. They are set forth there.
5 There may be -- I don't remember whether
6 they are also set forth in other
7 documents, such as the Insurance Transfer
8 Agreement and/or the Plan itself. But
9 they are set forth -- I think there may
10 be some set forth in the Insurance
11 Transfer Agreement. I am not sure. I
12 would have to look at them.

13 **Q. Okay.**

14 A. But I do remember that there
15 are cooperation arrangements.

16 **Q. If I understand your answer,**
17 **the cooperation obligation of the**
18 **Reorganized Debtors post-confirmation is**
19 **not the asbestos insurance companies but**
20 **rather to the Trust under the cooperation**
21 **agreement?**

22 A. That's correct.

23 MS. HARDING: Object to
24 form.

1 THE WITNESS: But the
2 asbestos insurance companies,
3 through the retention of asbestos
4 coverage defenses, are the
5 indirect beneficiaries of that
6 provision.

7 BY MR. BROWN:

8 **Q. How so?**

9 A. Because if they don't -- if
10 the Trust can't get Grace to perform the
11 cooperation that the policies require,
12 the insurance companies won't have to
13 provide the coverage if the coverage
14 court says such cooperation is mandatory.

15 There is nothing in the Plan
16 that says that an insurance company -- if
17 policy obligations are not performed as
18 required by the policy by somebody,
19 nevertheless they have to pay on the
20 insurance. The only entity or person
21 that could make such a determination
22 would be a coverage court judge and only
23 in the context of deciding that for
24 whatever reason the particular obligation

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<p>1 sought to be enforced by the insurer was 2 not applicable or required.</p> <p>3 Q. Okay. I want to ask you the 4 same series of questions with respect to 5 two other types of documents, and we can 6 try to short-circuit this or you can give 7 me the long answer. I don't care.</p> <p>8 Would your answers to the 9 questions concerning the assumption of 10 duties under the asbestos insurance 11 policies or the retention of those 12 duties, as you have just articulated, be 13 the same if my questions dealt with the 14 Asbestos Insurance Settlement Agreements?</p> <p>15 A. Well, sort of, except that 16 the Asbestos Insurance Settlement 17 Agreements, as far as I am aware, don't 18 have any obligations. They fully 19 performed. Well, strike that. There are 20 two categories of asbestos insurance.</p> <p>21 Q. I want to get to the third 22 one as well.</p> <p>23 A. There is a pre-petition 24 where it's been fully performed, and</p>	<p>1 never be any indemnity claim because the 2 claim gets cutoff from the insurer before 3 it reaches the point where the insurer 4 has paid money, which would trigger an 5 indemnity right. That's quite a bit 6 different from the non-settled coverage 7 that I was discussing earlier.</p> <p>8 Q. But that obligation, to the 9 extent it exists, is being assumed by the 10 Asbestos PI Trust?</p> <p>11 A. That obligation -- if one 12 could hypothesize, on the one hand, a 13 524(g) order that created the Trust in 14 the first place and protected the insurer 15 at the same time, which is what this Plan 16 does, and simultaneously somebody being 17 able to violate the 524(g) injunction by 18 successfully suing a protected party 19 without blowing up the entire Plan and 20 blowing up the Trust in the process, then 21 in that almost unimaginable hypothetical 22 situation, the protected insurer would 23 have an indemnity claim against Grace, 24 which would be channelled to the Trust</p>
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<p>1 there is post-petition one where we make 2 a settlement as the case is going on, 3 such as the Equitas agreement that I 4 mentioned before, and any others that 5 might get entered into.</p> <p>6 With respect to the former, 7 the pre-petition settlement agreements, 8 it's my understanding, rightly or 9 wrongly, that both parties have 10 essentially fully performed those 11 agreements, both the Debtors and the 12 insurers, at least to the extent 13 described in Exhibit-5, which is where 14 those are identified and described.</p> <p>15 The only remaining 16 obligation, quote/unquote, that I am 17 aware of under those agreements is a 18 potential indemnity obligation on the 19 part of Grace in the event that somebody 20 successfully or attempts to sue a settled 21 insurer.</p> <p>22 The Plan channels to the 23 Trust any claims against those settled 24 insurers, and, therefore, there should</p>	<p>1 and either -- I forget whether it's 2 Section 5.12 or 5.13 of the TDP says that 3 the Trust has to honor that claim to the 4 extent that it's valid.</p> <p>5 Q. Okay. I know some others in 6 the room have probably a question about 7 another type of agreement.</p> <p>8 Asbestos Insurance 9 Reimbursement Agreements, are the 10 obligations of the Debtors under those 11 documents being assumed by the Trust?</p> <p>12 A. That cannot be answered yes 13 or no, because the Trust and its handling 14 of claims is obviously going to be in 15 some sense different from Grace in its 16 handling of the claims because Grace 17 didn't have a TDP.</p> <p>18 The Plan proponents are 19 seeking in the Plan and in the 20 confirmation process a ruling from the 21 court under applicable bankruptcy 22 principles that the Debtors can transfer 23 those agreements to the Trust and the 24 Trust's performance under those</p>

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<p>1 agreements, under the TDP, will satisfy</p> <p>2 the obligations of the Debtors to those</p> <p>3 insurers, such that they will have to</p> <p>4 perform under those agreements.</p> <p>5 The asbestos -- the insurers</p> <p>6 holding such agreements have indicated</p> <p>7 that they disagree with that legal</p> <p>8 principle, or proposition. There will be</p> <p>9 in Phase 2 of the confirmation</p> <p>10 proceedings evidence taken as to the</p> <p>11 extent to which the substitution for the</p> <p>12 Trust and the TDP process for Grace is</p> <p>13 sufficiently materially different and</p> <p>14 adverse to, what I will call, the</p> <p>15 reimbursement insurers that it is not</p> <p>16 legally permissible for the court to say</p> <p>17 that under bankruptcy preemption</p> <p>18 principles, those insurers have to</p> <p>19 perform under those agreements.</p> <p>20 That's clearly going to be a</p> <p>21 confirmation issue, and we have conceded</p> <p>22 under other circumstances that that is</p> <p>23 something that we don't contend the</p> <p>24 Insured's neutrality provision applies</p>	<p>1 liens or encumbrances or whatever.</p> <p>2 The exception is put in</p> <p>3 frankly because in other cases, I</p> <p>4 think Federal-Mogul, some insurers</p> <p>5 -- or maybe it was Kaiser -- I</p> <p>6 don't know -- some insurers took</p> <p>7 the position that this kind of a</p> <p>8 clause might be read to override</p> <p>9 the asbestos insurance coverage</p> <p>10 defense carve-out. And so for</p> <p>11 avoidance of doubt, we threw in</p> <p>12 the exception.</p> <p>13 BY MR. BROWN:</p> <p>14 Q. Okay. You are familiar, are</p> <p>15 you not, with various claims that have</p> <p>16 been asserted or threatened by Scotts,</p> <p>17 Kaneb, BNSF, and Libby with respect to</p> <p>18 asbestos insurance policies, aren't you?</p> <p>19 A. Yes.</p> <p>20 Q. Are whatever claims they</p> <p>21 have, if any, through any of the</p> <p>22 insurance asbestos policies, are they</p> <p>23 being extinguished by virtue of this</p> <p>24 sentence?</p>
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<p>1 to.</p> <p>2 Q. Can I turn you now to</p> <p>3 Section 7.22, subsection (d), Romanette</p> <p>4 (ii).</p> <p>5 A. I see it.</p> <p>6 Q. The last sentence of that</p> <p>7 section says, "Asbestos Insurance Rights</p> <p>8 shall be so vested free and clear of all</p> <p>9 Encumbrances, liens, security interests,</p> <p>10 and other Claims or causes of action,</p> <p>11 except that all Asbestos Insurance</p> <p>12 Coverage Defenses is preserved."</p> <p>13 What does that mean?</p> <p>14 MS. HARDING: Object to</p> <p>15 form.</p> <p>16 THE WITNESS: Well, it</p> <p>17 basically means that if somebody</p> <p>18 thinks that they have got a lien</p> <p>19 on asbestos insurance rights that</p> <p>20 are purporting to be transferred</p> <p>21 to the Trust, they better show up</p> <p>22 and complain about it because the</p> <p>23 purpose of the Plan is to provide</p> <p>24 a transfer that is free of such</p>	<p>1 MS. HARDING: Object to</p> <p>2 form.</p> <p>3 THE WITNESS: My</p> <p>4 understanding of the Plan, and I</p> <p>5 have to confess that I have that I</p> <p>6 am not sure I thought about that</p> <p>7 question before, is that those</p> <p>8 types of claims are being</p> <p>9 channelled to the Trust to the</p> <p>10 extent that there are Grace</p> <p>11 indemnities of insurers with</p> <p>12 respect to such claims.</p> <p>13 I think there is a TDP</p> <p>14 provision -- again, it's 5.12 or</p> <p>15 5.13 -- that is, in essence, an</p> <p>16 acknowledgment that those types of</p> <p>17 claims are treated as indirect PI</p> <p>18 Trust claims.</p> <p>19 And so I would have to say</p> <p>20 that I don't believe that this</p> <p>21 provision is intended by some sort</p> <p>22 of self-operative effect to</p> <p>23 extinguish -- this provision, to</p> <p>24 me, is more like a C363B type of</p>

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<p>1 provision, essentially that we are 2 going to transfer the assets to 3 the Trust and if you got a claim 4 or an interest in the assets, then 5 you can litigate that claim 6 against the Trust. 7 But we are going, I guess, 8 have potential confirmation 9 objections about whether there are 10 any such claims. I mean, the mere 11 assertion of a claim doesn't mean 12 that it's valid. 13 BY MR. BROWN: 14 Q. Okay. If I can direct your 15 attention down to 7.2.4, which is 16 entitled Assignment and Enforcement of 17 Asbestos PI Trust Causes of Action. 18 A. Yes. 19 Q. I must confess, I am a bit 20 baffled by this one, so I need some help 21 with it. 22 How do Asbestos PI Trust 23 causes of action differ from asbestos 24 insurance rights?</p>	<p>1 Asbestos PI Trust claim against the 2 Trust, the Trust could assert Grace's 3 contribution rights as a counterclaim to 4 that. That's two categories of things 5 that this is intended to include. 6 Q. Okay. Let's go to page 64, 7 7.2.6, Creation and Termination of the 8 Asbestos PI TAC. 9 A. Correct. 10 Q. It says, "On or before the 11 Confirmation Date, the initial members of 12 the Asbestos PI TAC shall be selected by 13 the Asbestos PI Committee." 14 That has already occurred, 15 correct? 16 A. Correct. They are 17 identified in the Asbestos PI Trust 18 Agreement. 19 Q. Okay. How many actual 20 committee members are there on the 21 Asbestos PI Committee? 22 A. I don't remember. But we 23 have the Disclosure Statement here. I 24 could pretty quickly find out by just</p>
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<p>1 A. Well, I have to go back and 2 look at the definitions to answer that 3 question. 4 Well, I think asbestos PI 5 Trust causes of action does include 6 asbestos insurance rights. 7 Q. What else does it include? 8 A. Well, if you look at the 9 definition, it includes defenses such 10 that, for example, if a claimant says, I 11 have a valid claim against Grace that's 12 channelled to the Trust and the Trust 13 disagrees with it, the Trust retains all 14 the defenses to that claim that Grace 15 would have had. That's clause A under 16 definition 47. 17 Q. Okay. 18 A. Clause B is, for example, 19 contribution rights, et cetera. So, for 20 example, if the Trust has -- if Grace has 21 contribution rights that it has not 22 asserted and that which are still valid 23 against a codefendant in a tort system 24 and the codefendant brings in indirect</p>	<p>1 looking at it where they are identified. 2 Q. Okay. 3 A. It's certainly more than the 4 four that are going to be on the TAC. 5 Q. Okay. Is it fair to say 6 that the actual committee members who are 7 asbestos claimants act through their tort 8 counsel in connection with their 9 obligations as committee members? 10 A. As a general proposition, 11 that's true. In any given committee on 12 any given issue, an individual member 13 might choose to show up and act on their 14 own behalf, and there have been some 15 examples in the past where that has 16 occurred. 17 But, as a general 18 proposition, the committee members are 19 blue-collar folks of limited legal 20 knowledge, and they delegate to their 21 personal injury lawyers their sort of 22 activities acting for them as an agent on 23 these committees. 24 Q. Okay. You are counsel to</p>

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<p>1 the Asbestos PI Committee. You don't 2 have occasion, do you, to deal directly 3 with the actual claimants? 4 MR. FINCH: Object to the 5 form. 6 THE WITNESS: That's not 7 entirely true. I get calls 8 periodically that I just got this 9 incomprehensible Disclosure 10 Statement from Grace and could you 11 please tell me what it means or 12 something. But as a general 13 proposition -- 14 MR. FINCH: Transfer to it 15 to Finch. 16 THE WITNESS: Or where do I 17 file my proof of claim. 18 But, as a general 19 proposition, I don't nor do other 20 folks at Caplin & Drysdale deal 21 directly with original committee 22 members. 23 BY MR. BROWN: 24 Q. You deal with personal</p>	<p>1 committee? 2 A. Yes. 3 Q. And do those committee 4 members for those firms act through those 5 four gentlemen? 6 A. On the committee? 7 Q. Yes. 8 A. Generally, yes. 9 Q. Okay. So is it fair to say 10 that Mr. Rice, Mr. Weitz, Mr. Cooney, and 11 Mr. Budd selected themselves to be 12 members of the TAC? 13 A. No, because there are many 14 other members of the committee, and the 15 committee as a whole, which, in this 16 particular case, I believe has a majority 17 of members that are not these four 18 gentlemen, decided which of their members 19 they thought would be appropriate persons 20 to put on the TAC. 21 Q. And how was that decided? 22 A. As far as I know, they had 23 informal discussions, and they had a 24 committee meeting. I don't remember</p>
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<p>1 injury attorneys, correct? 2 A. As a general proposition, we 3 deal with the PI lawyers who have been 4 appointed by their client committee 5 member to act on their behest in the 6 committee. 7 Q. Now, the TAC members are 8 John Cooney, Perry Weitz, Joe Rice, 9 and -- who was the fourth one? 10 A. Well, I can tell you by 11 looking at the PI Trust Agreement, which 12 is Exhibit-2 to the Plan and looking at 13 the signature page, we should have, which 14 is -- 15 Q. Russell Budd. 16 A. Russell Budd, John Cooney, 17 Joseph Rice, and Perry Weitz. 18 Q. And each of them works for a 19 law firm, correct? 20 A. Each of them is a partner a 21 law firm, yes. 22 Q. Sorry. I didn't mean to... 23 Now, does each of those law 24 firms have a client that sits on the</p>	<p>1 whether there were votes or anything like 2 that. But at the end of the day, through 3 some sort of nomination or informal 4 self-nomination or self-nomination, 5 speeches, lobbying, discussions, what 6 have you, there came a time at which the 7 committee voted to select these four 8 people. 9 Q. Okay. 10 A. And I might add that the 11 Future Claimants Representative had a 12 sort of a generalized oversight in the 13 sense that while the Plan contemplates 14 that the committee would nominate the 15 TAC. If the FCR thought, for some reason 16 or another, that somebody had been put on 17 the TAC that was a real bad idea, the 18 committee would probably have had to 19 listen to the Future Representative's 20 views on that even though the Futures Rep 21 did not have sort of a formal veto or 22 role in that process. 23 Q. Okay. I want to now turn to 24 page -- well, it's 69 on my version,</p>

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<p>1 Section 7.7, Conditions to Occurrence of 2 the Confirmation Date, and I want to 3 focus your attention first on (g). 4 A. I see it. 5 Q. What are the securities that 6 are funding the Asbestos PI Trust? 7 A. The warrant and the Deferred 8 Payment Agreement, which is a debt 9 obligation, which also includes, I 10 believe, a promissory note or promissory 11 notes. 12 Q. Can you describe for me the 13 circumstances under which the asbestos PI 14 claim -- excuse me -- the Asbestos PI 15 Trust will be funded with dividends? 16 A. In the event that it 17 exercises the warrant and acquires stock 18 pursuant to that exercise and the stock 19 pays dividends, it will get dividends. 20 Q. And if the warrant is not 21 exercised? 22 A. Then it won't get dividends. 23 Q. What about if there is a 24 default under the deferred payment note?</p>	<p>1 and the tort system, et cetera, 2 you would have a 3 first-come-first-serve operation 4 where there was the distinct 5 possibility that, as it happened 6 in the Manville Trust at the very 7 beginning, all the money would run 8 out the door at the front end, and 9 there wouldn't be anything left 10 for future claimants, which would 11 violate 524(g). 12 BY MR. BROWN: 13 Q. Okay. Well, the way that 14 this provision is written suggests that 15 any procedures other than those that are 16 set forth in this Plan would defeat the 17 purposes of Section 524(g). 18 Is that what is intended 19 here? 20 MR. FINCH: Object to form. 21 MS. HARDING: Object to 22 form. 23 BY MR. BROWN: 24 Q. Are there other options, is</p>
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<p>1 A. My recollection is that the 2 Trust has the right to get 50.1 percent 3 of the stock of the Debtor under those 4 circumstances. 5 But, again, the terms of -- 6 that's a very complicated set of 7 documents, and the precise terms of that 8 are whatever the document states. I can 9 only give you a sort of a very 10 generalized description. 11 Q. Okay. Let me draw your 12 attention now down to (l), condition (l). 13 A. Yes, I see it. 14 Q. What does that mean? 15 MS. HARDING: Object to 16 form. 17 THE WITNESS: Well, what it 18 means is that if you didn't have a 19 TDP, which includes things like a 20 payment percentage and mechanisms 21 for trying to trying to limit the 22 ways in which the Trust expends 23 monies on claims, and you just had 24 sort of a come in, sue the Trust</p>	<p>1 the question? 2 A. If the question is could one 3 hypothesize a somewhat different set of 4 TDPs that had somewhat different 5 procedures, the answer is depending on 6 what that different TDP set of procedures 7 was, you might be able to say the same 8 thing about it. 9 The purpose of this thing is 10 to say that this structure, according to 11 the court, satisfies the requirements of 12 524(g) that say that you have to 13 establish this requirement. 14 I mean, this is a finding of 15 fact that is intended to have the court 16 rule that the Plan does, in fact, meet 17 the requirements of a subsection of 18 524(g). 19 Q. You could, in fact, have a 20 Plan that met the qualifications for 21 524(g) that actually had a role for 22 asbestos insurance entities, correct? 23 MR. FINCH: Object to form. 24 MS. HARDING: Object to</p>

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<p>1 form.</p> <p>2 THE WITNESS:</p> <p>3 Hypothetically, probably yes. It</p> <p>4 would be more difficult, but,</p> <p>5 hypothetically, yes. You could</p> <p>6 have -- we have had some plans</p> <p>7 that had coverage in place</p> <p>8 agreements with insurers, for</p> <p>9 example, that we felt satisfied</p> <p>10 524(g). But you have to get the</p> <p>11 insurers' agreement to have a</p> <p>12 coverage in place agreement.</p> <p>13 BY MR. BROWN:</p> <p>14 Q. Okay. Let's go now to</p> <p>15 condition (r) -- I am sorry. Condition</p> <p>16 (s).</p> <p>17 A. Yes.</p> <p>18 Q. Now, for purposes of my</p> <p>19 question, I want you to assume that when</p> <p>20 I use the term "settled asbestos</p> <p>21 insurance companies," I want you to</p> <p>22 assume that those that are pre-petition.</p> <p>23 A. Okay.</p> <p>24 Q. And my question is a very</p>	<p>1 because we think they are nice folks.</p> <p>2 Q. I didn't think so.</p> <p>3 A. Settled asbestos insurers,</p> <p>4 by definition, are insurers that have</p> <p>5 indemnity rights against Grace.</p> <p>6 Q. They have also paid a lot of</p> <p>7 money?</p> <p>8 A. And they paid a lot of money</p> <p>9 in the past. But the past money -- money</p> <p>10 is fungible. The past money went into</p> <p>11 Grace's coffers, went out or didn't go</p> <p>12 out, et cetera. But they are not being</p> <p>13 asked for any new money.</p> <p>14 But Grace has an economic</p> <p>15 interest in not having asbestos PI claims</p> <p>16 brought against those insurers that could</p> <p>17 then trigger an indemnity obligation of</p> <p>18 Grace to the insurer against which that</p> <p>19 asbestos PI claim was asserted. They</p> <p>20 have an economic interest in preventing</p> <p>21 that.</p> <p>22 So the deal is channel any</p> <p>23 such claim that might give rise to the</p> <p>24 asbestos indemnity claim to the Trust,</p>
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<p>1 general one, because I have heard</p> <p>2 different views, and that is, what</p> <p>3 benefits are being provided by or on</p> <p>4 behalf of settled asbestos insurance</p> <p>5 companies listed on Exhibit-5?</p> <p>6 A. It is the position of the</p> <p>7 ACC that Grace is paying close to</p> <p>8 \$3 billion of value to the Trust on</p> <p>9 behalf of not only itself but a variety</p> <p>10 of other protected parties, including</p> <p>11 Non-Debtor affiliates and, in this</p> <p>12 particular case, settled asbestos</p> <p>13 insurers.</p> <p>14 And it is doing so on behalf</p> <p>15 of settled asbestos insurers because</p> <p>16 those insurers have indemnity claims</p> <p>17 against Grace, which are being, if they</p> <p>18 hypothetically could ever occur, are</p> <p>19 being channelled to the Trust as a means</p> <p>20 of protecting Grace against such -- well,</p> <p>21 let me back up.</p> <p>22 The purpose of putting</p> <p>23 settled asbestos insurers in here is not</p> <p>24 to provide a gratuitous asbestos insurers</p>	<p>1 and in exchange for that, part of what</p> <p>2 Grace is paying you is to get rid of</p> <p>3 asbestos PI claims which include indirect</p> <p>4 asbestos PI claims for indemnity or</p> <p>5 direct asbestos PI claims for indemnity.</p> <p>6 Q. Okay.</p> <p>7 A. And that's the basis.</p> <p>8 Q. I think you said at the very</p> <p>9 beginning of either the last question or</p> <p>10 the one before that Grace was</p> <p>11 contributing 3 million?</p> <p>12 A. Billion.</p> <p>13 Q. That's what I thought.</p> <p>14 Okay. I just wanted to make sure I had</p> <p>15 the number correct.</p> <p>16 A. I mean, that's our view of</p> <p>17 the approximate amount of what they were</p> <p>18 contributing at the time we made the</p> <p>19 deal, I guess would be a better way to</p> <p>20 put it. There are other people that</p> <p>21 might value it differently.</p> <p>22 Some of things that were</p> <p>23 worth more at the time the deal was made</p> <p>24 are worth less today but hopefully will</p>

1 be worth more in the future. So it's a
2 moving target. But 3 billion is
3 notionally the deal we thought we made.

4 **Q. I want to now turn your**
5 **attention to Section 7.8, which is**
6 **entitled Conditions to Occurrence of the**
7 **Effective Date, and specifically**
8 **condition (s), the last condition.**

9 A. I see it.

10 **Q. I just want to make sure I**
11 **understand this. If the court were to**
12 **enter an order, saying that contractual**
13 **indemnity claims of settled insurers are**
14 **not properly classified as indirectly PI**
15 **Trust claims, then the Plan can't go**
16 **effective even if it's confirmed?**

17 A. Unless somebody waives this
18 provision, that is correct.

19 **Q. Okay. And among the parties**
20 **that need to waive it are Sealed Air and**
21 **Fresenius?**

22 A. Among the parties are, yes.

23 **Q. That holds true, I gather,**
24 **in the event that Scotts' claim or BNSF's**

1 **claim or Montana's claim was determined**
2 **not to be an indirect PI Trust claim?**

3 A. Well, yes and no. I mean,
4 to be precise about it, if something is
5 included -- if one of those claims is
6 included within the definition of an
7 indirect PI Trust claim and instead is
8 held to be a general unsecured claim,
9 that's triggered. This provision is
10 triggered.

11 There could be a dispute
12 about whether a particular claim was, in
13 fact, defined as an indirect PI Trust
14 claim and, therefore, whether this
15 provision was triggered or not.

16 **Q. Okay. Can you now look at**
17 **Section 7.13, specifically the language**
18 **that is underscored.**

19 A. I see it.

20 **Q. To the extent that my**
21 **clients, OneBeacon or Seaton, have claims**
22 **against Fresenius or Sealed Air, are they**
23 **released under this provision?**

24 MS. HARDING: Object to

1 form.

2 MR. FINCH: Object to form.

3 THE WITNESS: Well, it would
4 depend upon whether you had
5 something called an
6 asbestos-related claim. I mean,
7 the --

8 BY MR. BROWN:

9 **Q. Or an asbestos claim?**

10 A. Or an asbestos claim or an
11 SA claim.

12 This isn't a blanket release
13 of all claims. It purports to be a
14 release of certain specified claims as
15 set out in the definitions that are
16 incorporated in this language.

17 **Q. Let me --**

18 A. But to that extent, the
19 answer is yes.

20 **Q. So if OneBeacon or Seaton**
21 **had a claim that fits within the**
22 **definition of Asbestos Claim, initial cap**
23 **A, initial cap C, against Fresenius or**
24 **Sealed Air, that claim is released**

1 **pursuant to this provision; is that**
2 **correct?**

3 A. As those claims are defined,
4 yes.

5 **Q. Does this provision release**
6 **claims that constitute asbestos claims**
7 **that Scotts may have against settled**
8 **asbestos insure companies?**

9 MS. HARDING: Object to
10 form. Also, I think it calls for
11 legal conclusion.

12 THE WITNESS: I have to say
13 that that does. The problem is
14 that the claims are being
15 channelled, and so the question
16 that you are raising of release is
17 whether, for example, the claims
18 simply are released and vanish or
19 whether they are released in the
20 sense of you can't assert them
21 against the particular entity
22 because they are going somewhere
23 else, i.e. to the Trust -- this is
24 in general -- let me make two

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<p>1 still a fundamental disconnect in the 2 sense that the asbestos permanent 3 channelling injunction either applies or 4 it doesn't apply. 5 If it applies, it cuts off 6 the claims before they reach you. If it 7 doesn't apply, it doesn't channel your 8 indemnity claims to the Trust. 9 The only exception to that, 10 which might be covered under some other 11 provision of the Plan, is if Scotts has a 12 non-asbestos claim, which is determined 13 to be eligible for vendor coverage under 14 your policies and they are not exhausted 15 and blah, blah, blah and it ultimately 16 gets determined that there is actual 17 liability on your part and that liability 18 was indemnified by Grace, then the 19 asbestos permanent channelling injunction 20 doesn't apply. 21 Whether there is some other 22 provision in the Plan that would preclude 23 that claim from being asserted, I don't 24 remember.</p>	<p>1 from claimants, direct action type 2 claims. 3 This is intended to be a 4 communal asset for the benefit of 5 the present of future claimants in 6 the Trust, and allowing individual 7 claimants to go around the back 8 door, if you will, and bring 9 claims against the insurers whose 10 coverage was being assigned for 11 the communal benefit of the Trust 12 would be inequitable, in our view, 13 and that's the purpose of this 14 injunction. 15 BY MR. BROWN: 16 Q. Okay. You are aware that 17 Scotts and BNSF have asserted certain 18 rights under certain asbestos insurance 19 policies, correct? 20 A. Correct. 21 Q. Does this injunction enjoin 22 those two entities from pursuing coverage 23 for asbestos-related claims under the 24 settled asbestos insurance policies or</p>
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<p>1 Q. I think we are talking past 2 each other. Let's just move on. 3 Let's go to Section 8.4, 4 which is the Asbestos Insurance Entity 5 Injunction. 6 A. I have it. 7 Q. What is the purpose of this 8 injunction? 9 A. The purpose of this 10 injunction -- 11 MS. HARDING: Object to 12 form. 13 THE WITNESS: Excuse me? 14 MS. HARDING: I just object 15 to form. 16 THE WITNESS: From the ACC's 17 perspective, the purpose of this 18 injunction is to protect the 19 insurance assets being transferred 20 to the Trust from being 21 intercepted, if you will, or -- 22 MR. FINCH: Looted. 23 THE WITNESS: -- looted or 24 pillaged, or whatever, by claims</p>	<p>1 frankly under any asbestos insurance 2 policies? 3 MR. FINCH: Object to form, 4 compound. 5 THE WITNESS: Not if what we 6 are suing for is not based upon or 7 arising out of an asbestos PI 8 claim against the Debtors or any 9 asbestos insurance rights. 10 If they are asserting -- you 11 have to look at the definition of 12 asbestos PI claim; you have to 13 look at the definition of asbestos 14 insurance rights. 15 The asbestos insurance 16 rights are the rights of the 17 Debtor. They are not the rights 18 of Scotts or BNSF. So you have -- 19 and asbestos PI claims are 20 personal injury claims arising out 21 of exposure to Grace products. 22 So it would depend upon, 23 again, the type of claim that was 24 being asserted by Scotts or BNSF.</p>

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<p>1 BNSF, for example, purports to 2 have, at least in one instance, I 3 think it's Royal, claims issued 4 directly to it by Royal that were 5 somehow procured by Grace but 6 which don't cover Grace. I don't 7 believe that this injunction would 8 preclude suits by BNSF on that 9 sort of insurance claim. 10 BY MR. BROWN: 11 Q. Would the prior injunction 12 enjoin that type of claim? 13 A. The asbestos personal 14 injury? 15 Q. Yes. 16 A. No, because those policies 17 are not within the definition -- they are 18 not covered in Exhibit-5, and so Royal 19 wouldn't be an asbestos-protected party 20 with respect to those policies. 21 We are now talking about 22 non-settled coverage here, aren't we? 23 Wasn't that what your question was? 24 Q. I don't know. This was your</p>	<p>1 injunction probably does preclude Scotts 2 from seeking that coverage, although I 3 really have to think about that. 4 I don't know. I have to 5 confess that I haven't really -- I would 6 really have to parse this to make sure 7 whether -- if you are talking about 8 unsettled coverage, not settled coverage, 9 but unsettled coverage. And I am not 10 sure Scotts -- so if it's unsettled, 11 then, by definition, it hasn't been 12 indemnified by Grace. So the claims 13 don't go to the Trust on that basis. 14 I guess I have to just say I 15 think it may very well be enjoined by 16 this, but, really, to be more confident 17 about that, I would really have to spend 18 more time parsing this and thinking about 19 it. 20 Q. Okay. 21 A. I think it would be 22 channelled -- not channelled but 23 enjoined. 24 Q. I am going to move at this</p>
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<p>1 hypothetical. 2 A. You asked me were the claims 3 as additional insureds of BNSF and Scotts 4 covered by this injunction, and I am 5 trying to tell you it depends on what 6 kind of claims against whom. 7 I mean, it's got -- first, 8 unlike the 524(g) injunction, which 9 applies only to protected parties, this 10 applies to people with settled coverage, 11 unsettled coverage, reimbursement 12 coverage, as long as it's coverage that's 13 being transferred to the Trust. If it's 14 coverage that's not being transferred to 15 the Trust, then there is no effort to 16 protect it. 17 Q. Okay. 18 A. The complexity of your 19 question arises out of the fact that you 20 could have coverage that's being 21 transferred to the Trust, which somebody 22 nevertheless claims to be an additional 23 insured on, such as Scotts under a vendor 24 endorsement. And there, I think this</p>	<p>1 point from the Plan to another document, 2 so why don't we take a quick break. 3 A. Okay. 4 (There was a break from 2:10 5 p.m. to 2:22 p.m.) 6 BY MR. BROWN: 7 Q. Mr. Lockwood, can you take a 8 look at Exhibit-2. That's Exhibit-2 to 9 the Plan, which we are going to mark as 10 ACC1-10. 11 (ACC 30(b)(6)-10 marked for 12 identification at this time.) 13 BY MR. BROWN: 14 Q. Can you identify it? 15 A. ACC Exhibit-10 is the 16 Asbestos PI Trust Agreement, which is 17 attached as Exhibit-2, to the February 18 27, 2009 Plan reorganization of W.R. 19 Grace. 20 Q. Can I direct your attention 21 to Section 2.2 entitled General 22 Administration and specifically 23 subsection (e). 24 A. Yes.</p>

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<p>1 Q. There is a reference in 2 subsection (e) to the TAC, T-A-C, which 3 is the Trust Advisory Committee, correct? 4 A. Correct. 5 Q. And the Futures 6 Representative, which is the Asbestos PI 7 Futures Representative, correct? 8 A. Correct. 9 Q. And earlier today, we went 10 through a list of the individuals who are 11 on the TAC, and you mentioned Russell 12 Budd, John Cooney, Joe Rice, and Perry 13 Weitz. 14 A. Correct. 15 Q. Am I correct that each of 16 those gentlemen or their respective firms 17 represent asbestos claimants with claims 18 against Grace? 19 A. Correct. 20 Q. Can you give me some idea of 21 how many claims Mr. Budd's firm has 22 against Grace? 23 MR. FINCH: Objection, lack 24 of foundation.</p>	<p>1 MR. FINCH: Objection, 2 foundation. 3 THE WITNESS: Only in the 4 sort of vaguest and most general 5 terms. Well, I am sure it's more 6 than 10,000. Again, it could be 7 20,000; it could be 30,000. I 8 just don't know. 9 Those firms -- with the 10 exception of Mr. Cooney's firm, 11 those firms represent a lot of 12 people. And in the case of 13 Mr. Rice, he has co-counsel 14 relationships, his firm does, with 15 a lot of other firms. So it gets 16 into the question of, quote, what 17 do you mean by representation, 18 sole representation, joint 19 representation. But, suffice it 20 to say, they represent a lot of 21 claimants. 22 BY MR. BROWN: 23 Q. Okay. And in their capacity 24 as counsel for those claimants, they have</p>
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<p>1 THE WITNESS: No, except 2 that it's -- I think we 3 established when we were doing 4 request for admission or something 5 to somebody that all four of 6 those, each one of those firms 7 represents at least 1,000 8 claimants against Grace. 9 BY MR. BROWN: 10 Q. We did. 11 A. What I don't know is how 12 many more than a thousand any of them may 13 represent. 14 Q. Okay. 15 A. The proofs of claim are on 16 file. Somebody could go and ascertain 17 that, if it mattered. 18 Q. Okay. Do you know how many 19 -- the firms that those four TAC members 20 are members of collectively how many they 21 have? In other words, if you took the 22 four firms, do you have an idea or 23 estimate as to the number of claims that 24 they have against Grace?</p>	<p>1 fiduciary duties to their clients, 2 correct? 3 A. However those are 4 established by the local bars, et cetera, 5 before which they practice, yes, 6 generally. 7 Q. And they get paid to 8 represent those clients, correct? 9 A. Generally speaking, I assume 10 that's correct. 11 Q. And is it your understanding 12 that, generally speaking, that's through 13 a contingency arrangement? 14 A. Again, generally speaking, 15 correct. 16 Q. And is it your understanding 17 that the contingent fee that is typically 18 charged by those firms is somewhere 19 between 33 and a third and 40 percent of 20 the recovery? 21 MR. FINCH: Objection, lack 22 of foundation, calls for 23 speculation. 24 THE WITNESS: I really don't</p>

1 have firsthand knowledge of that.

2 BY MR. BROWN:

3 **Q. Okay. Well, if it's a**
4 **contingent fee arrangement and there is**
5 **no recovery, there is no payment to the**
6 **firm, generally speaking, correct?**

7 A. Except for reimbursed
8 expenses in those states that permit you
9 to advance expenses and require that you
10 seek recovery from your client under
11 their ethical rules, but yes.

12 **Q. So is it fair to say that**
13 **Mr. Budd, Mr. Cooney, Mr. Weitz, and**
14 **Mr. Rice are motivated by their fiduciary**
15 **obligations and their own personal gain**
16 **to obtain a recovery on behalf of their**
17 **clients against the Asbestos PI Trust?**

18 A. When they are acting as
19 counsel for their individual clients,
20 yes.

21 **Q. Okay. How about when they**
22 **are acting as TAC members?**

23 A. When they are acting as TAC
24 members, they have a fiduciary

1 are not acting as TAC members. And when
2 they are acting as TAC members, they are
3 not involved in processing individual
4 claims or evaluating individual claims or
5 having anything to do with individual
6 claims any more than they are as ACC
7 members with respect to individual claims
8 and their clients in the bankruptcy case.

9 **Q. Well, if you look at (e),**
10 **the section that I referred you to at the**
11 **outset, it says that the TAC members**
12 **should consult with the trustees on**
13 **matters of general implementation and**
14 **administration of the PI Trust.**

15 MR. FINCH: Object to form.

16 The document doesn't say that.

17 BY MR. BROWN:

18 **Q. All right. Mr. Lockwood,**
19 **just take a look at Section 8, if you**
20 **would.**

21 A. It says, "The Trustees shall
22 consult with the TAC and the Futures
23 Representative on the general
24 implementation and administration of the

1 obligation, as they do as ACC members, to
2 look out for the interests of the
3 constituency they represent as a whole.

4 **Q. Okay. And the fiduciary**
5 **duties that they owe to their clients, on**
6 **the one hand, and to all beneficiaries of**
7 **the Asbestos PI Trust, on the other hand,**
8 **are they the same?**

9 A. I don't know how to answer
10 that question.

11 **Q. Let me --**

12 A. Because they are acting in
13 different capacities. So when you say
14 are they the same, do you mean do they
15 come from the same source? I can't
16 answer that.

17 **Q. Are the fiduciary duties**
18 **that they have to their clients, on the**
19 **one hand, and to all claimants against**
20 **the Asbestos PI Trust in conflict with**
21 **one another at any level?**

22 A. As a general proposition, I
23 don't think so, because when they process
24 individual claims against the Trust, they

1 PI Trust."

2 **Q. Okay. What's covered by**
3 **Romanette (i), would that involve how the**
4 **Trust should deal with meritless claims?**

5 A. That question is hard to
6 answer in the sense that I am not sure
7 what you mean by meritless claims. I
8 mean, the TDPs identify what claims are
9 eligible for compensation and what
10 aren't.

11 If you are of the personal
12 opinion that certain categories of claims
13 under the TDP, under the criteria are,
14 quote, meritless, close quote, well, the
15 TAC and the Futures Rep take the TDP as
16 it finds it.

17 So they don't have a
18 fiduciary obligation to render personal
19 opinions about the TDP criteria as it
20 applies to individual clients or
21 individual claims.

22 That said, at some level, I
23 suppose they have a generalized -- if the
24 trustees raise with them the question, on

1 some generalized basis, whether there is
2 some large category of claims that are,
3 quote, meritless that are not otherwise
4 prescribed by the Trust, I could
5 hypothesize the situation where they
6 might be consulted on that subject.

7 **Q. Okay. And that would be**
8 **true even if their firm was the firm that**
9 **submitted those claims, correct?**

10 A. Well, if their firm was the
11 firm that submitted their claims, I would
12 assume that they would recuse themselves,
13 just like any organization, if there was
14 a specific conflict of interest on a
15 subject like that, the party involved
16 would recuse themselves.

17 **Q. Is there anything in the**
18 **Trust Agreement or the TDP that requires**
19 **them to recuse themselves?**

20 A. No, but there is nothing in
21 the TDP that requires them to act in any
22 way different from any set of fiduciaries
23 that are they are confronted in a
24 particular factual context, some conflict

1 of interest between their personal
2 interests and their interest of the
3 entity that they are involved with.

4 **Q. Well, to the extent that**
5 **their fiduciary duties to their clients**
6 **in any particular case are in conflict**
7 **with their fiduciary duties to all**
8 **beneficiaries of the Asbestos PI Trust,**
9 **are they required to step aside from the**
10 **decision-making?**

11 MR. FINCH: Objection, form.

12 THE WITNESS: Yeah, I
13 mean -- if you take the position
14 that prosecuting an individual
15 claim is a conflict with the
16 interest of the Trust as a whole
17 because if the claim is
18 successful, it will reduce the
19 amount in the Trust that would be
20 available to other people; if the
21 claim were unsuccessful, then no,
22 they don't have an obligation not
23 to prosecute individual claims.

24 It's well understood that

1 the whole function of the TAC is
2 to represent the interest of
3 people with individual claims,
4 albeit on a collective basis.

5 If you are saying the
6 hypothetical you gave earlier that
7 if there was some -- the trustees
8 were proposing a change that
9 somehow or another focused on the
10 individual claims of a particular
11 firm as opposed to categories of
12 claims that virtually all lawyers,
13 asbestos lawyers represented, then
14 you might have a recusal issue.

15 And/or the trustees might be
16 motivated to discount the advice
17 they were getting. Because this
18 is a consultation provision. It
19 doesn't say the trustees having
20 consulted with the TAC; all of a
21 sudden have to agree with whatever
22 the TAC tells them. It just says
23 they have to consult with them.

24 BY MR. BROWN:

1 **Q. What about the next**
2 **subsection, which is (f), which sets**
3 **forth a whole series of items on which**
4 **the trustees must obtain the consent of**
5 **the TAC and the Futures Representative?**

6 A. Subject to certain other
7 provisions that apply if the TAC and the
8 FCR don't give their consent, yes. What
9 do you mean what about it? There are --
10 it exists in the TDP, in the Trust
11 Agreement. And there are specified
12 things that they have to obtain consent
13 from the TAC on and the FCR, and if they
14 don't get the consent, they can get them
15 overruled by the judge.

16 **Q. Let me ask you a more**
17 **general question. What is the need to**
18 **have the TAC?**

19 A. The TAC goes back -- the
20 concept goes back at least to the
21 Manville TDP. And the notion was that
22 this was -- this Trust was created --
23 well, let me start out by saying that my
24 partner, Mr. Inselbuch, who you are going

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<p>1 to take the deposition of on June 12th --</p> <p>2 Q. Somebody is.</p> <p>3 A. -- is a lot better to</p> <p>4 equipped to give you the historical</p> <p>5 overview of these kind of TDP provisions</p> <p>6 than I am, and anything I say on this</p> <p>7 subject frankly is subject probably to be</p> <p>8 corrected by him.</p> <p>9 But, in general, as I</p> <p>10 understand the history of the concept,</p> <p>11 the idea was that this is a settlement</p> <p>12 between a whole lot of people who are</p> <p>13 agreeing to have their claims taken away</p> <p>14 from the Debtor and put in a Trust, and</p> <p>15 the Trust is going to deal with the</p> <p>16 claims.</p> <p>17 And the notion was that --</p> <p>18 first, it was always a criteria you would</p> <p>19 not put a asbestos personal injury lawyer</p> <p>20 or anybody would submit claims in as a</p> <p>21 trustee. So the trustee, by definition,</p> <p>22 therefore, in order to avoid that sort of</p> <p>23 conflict, were not going to have any real</p> <p>24 knowledge about asbestos personal injury</p>	<p>1 With respect to the consent</p> <p>2 process, the notion was we made a deal in</p> <p>3 the bankruptcy case. That deal was</p> <p>4 embodied in the Trust Agreement and the</p> <p>5 TDP. If people are going to start</p> <p>6 changing that deal after the fact, then</p> <p>7 representatives who knew and were</p> <p>8 involved with making the original deal</p> <p>9 ought to at least presumptively have some</p> <p>10 voice in whether or not it's okay to</p> <p>11 change it.</p> <p>12 However, there is the safety</p> <p>13 valve on that, which is if the TAC, for</p> <p>14 example, decides that they want to</p> <p>15 resist -- let's assume you needed to</p> <p>16 change the payment -- lower the payment</p> <p>17 percentage because you thought there was</p> <p>18 going to be more future claims coming in</p> <p>19 than had been predicted.</p> <p>20 Well, the TAC might have an</p> <p>21 institutional interest in keeping the</p> <p>22 payment percentage high, and the Futures</p> <p>23 Rep might want to see it lowered and the</p> <p>24 trustees might want to see it lowered.</p>
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<p>1 litigation and asbestos personal injury</p> <p>2 claims.</p> <p>3 And, as I understand, the</p> <p>4 notion was that it would be a good idea</p> <p>5 to do two things: First, have</p> <p>6 experienced personal injury lawyers</p> <p>7 around who could, to the extent needed,</p> <p>8 educate trustees who come to the job with</p> <p>9 no real knowledge of how the system works</p> <p>10 to give them input. That's the</p> <p>11 consultation notion.</p> <p>12 And the same for the FCR,</p> <p>13 who would be a counterbalance, to some</p> <p>14 extent, because to the extent that the</p> <p>15 TAC represents present claimants, it</p> <p>16 would have, even as a collective group</p> <p>17 representing present claimants, some kind</p> <p>18 of incentive to try and get more money</p> <p>19 out sooner than might be in the</p> <p>20 beneficial interests of the future</p> <p>21 claimant. So you have the Future</p> <p>22 Claimants' Representative who has got</p> <p>23 coequal status in the TAC in advising the</p> <p>24 trustees.</p>	<p>1 So how do you deal with that?</p> <p>2 Well, the TAC is supposed to</p> <p>3 be representing the present claimants.</p> <p>4 That's where their fiduciary is. So if</p> <p>5 they don't consent, you go to the judge,</p> <p>6 and you say, judge, "The TAC is being</p> <p>7 unreasonable here." And that's how you</p> <p>8 resolve it. So, in an overview sense,</p> <p>9 that's the concept behind it.</p> <p>10 Q. Okay. The statute 524(g)</p> <p>11 does not require a TAC in connection with</p> <p>12 an asbestos Trust, does it?</p> <p>13 A. It doesn't require a TAC,</p> <p>14 and it doesn't require a Futures Rep.</p> <p>15 But the legislative history says it was a</p> <p>16 modeled on Manville and Manville has had</p> <p>17 an SEB on the Futures Representative,</p> <p>18 vis-a-vie the Trust, at least since the</p> <p>19 Trust was reorganized in the mid-1990s or</p> <p>20 early 1990s. Again, Inselbuch can tell</p> <p>21 you more about that because he was there.</p> <p>22 Q. The TAC, if I understand the</p> <p>23 Trust Agreement, has fiduciary duties to</p> <p>24 indirect PI Trust claimants as well,</p>

1 correct?

2 A. As a general proposition,
3 that's true.

4 **Q. Now --**

5 A. But I will say -- it's a
6 little tricky because it's clear that the
7 vast bulk of the claimants whose claims
8 were being channelled to the Trust are
9 direct claimants. And, moreover, the
10 individual -- the indirect claimants
11 generally tend to be entities that have
12 the financial and legal wherewithal to
13 look at their own interests.

14 So my own personal
15 perspective on it, while you can make a
16 general statement on the fiduciary
17 obligation, the major focus of the TAC
18 and the FCR is direct claimants, not
19 indirect claimants.

20 **Q. To the extent that the TAC**
21 **acts in a manner that the indirect**
22 **asbestos PI claimants feel is in their**
23 **interest, is the TAC insulated from any**
24 **liability to indirect asbestos PI**

1 claimants?

2 A. Could you reread that
3 question, please?

4 (The reporter read from the
5 record as requested.)

6 THE WITNESS: Aren't you
7 missing a "not" in that question?
8 BY MR. BROWN:

9 **Q. Against their interest is**
10 **what I meant.**

11 A. There is, I think, in here
12 some kind of a -- I don't know what you
13 call it -- exculpation provision or
14 something. But it doesn't cover bad
15 faith.

16 So the answer is we would
17 have to look at the document to determine
18 exactly what potential liability the TAC
19 has.

20 And, moreover, given the
21 TAC's role, which is it doesn't have the
22 unilateral power to make any decisions.
23 The trustees make the decision, and the
24 TAC consults or consents. It's a little

1 hard to hypothesize the claim that you
2 talk about.

3 But, in any event, I am
4 looking for the -- I am pretty sure there
5 is a Trust Agreement provision here
6 somewhere that addresses -- Section 4.6.
7 Essentially, it provides for indemnity
8 and exculpation to the extent that that's
9 permitted by a statutory trust law, Trust
10 organized under the laws of Delaware. So
11 whatever the laws of Delaware permit you
12 to indemnify fiduciaries for is what's
13 provided.

14 And that's obviously both
15 fact-specific and depends. And I don't
16 know what Delaware law does or doesn't
17 provide on hypothetical fact
18 circumstances.

19 **Q. Let's go to page 13 on my**
20 **draft.**

21 A. Of the Trust Agreement?

22 **Q. Yes.**

23 A. I am there. What Section is
24 this, just to make sure we have the same

1 pagination?

2 **Q. It's under the Consent**
3 **provision. It's (f), Romanette (xiv).**

4 A. I see it.

5 **Q. I am not sure I understand**
6 **this, the latter part of this, and I want**
7 **to ask you what it means.**

8 Do you see where it says,
9 "...or to comply with an applicable
10 obligation under an insurance policy or
11 settlement agreement pursuant to Section
12 [6.5] of the TDP"?

13 A. Yes.

14 **Q. Does this mean that the**
15 **trustees need the consent of the TAC in**
16 **order to comply with obligations under**
17 **insurance agreements, insurance policies?**

18 A. Well, first, since it
19 incorporates Section 6.5 of the TDP, you
20 have to look to see what that is, because
21 it certainly -- if there is any
22 limitations on their ability to comply
23 with obligations under transfer insurance
24 rights, it's got to be spelled out in

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<p>1 6.5. There is no other limitation 2 expressed in that paragraph. 3 6.5 deals with the 4 confidentiality of claimants' 5 submissions. In general, it takes the 6 position that claimants' submissions to 7 the Trust are made in the course of 8 settlement negotiations and, therefore, 9 would be treated as confidential. To the 10 extent state law provides a privilege, 11 the privilege is not going to be 12 eliminated. 13 There is then a provision -- 14 there is a provision about subpoenas 15 getting information. And then there is 16 the sentence, "Notwithstanding anything 17 in the foregoing to the contrary, with 18 the consent of the TAC and the Futures 19 Representative, the PI Trust may, in 20 specified limited circumstances, disclose 21 information, documents or other materials 22 reasonably necessary in the PI Trust's 23 judgment to preserve, litigate, resolve 24 or settle coverage, or to comply with any</p>	<p>1 court, and indeed there have been some 2 instances in which there has been 3 litigation, existing trusts by the Trust, 4 trying to get the court to determine that 5 certain claims information has to be 6 turned over to certain insurers in 7 connection with settlement agreements, 8 for example. 9 And in some instances, the 10 Trust has issued orders saying that 11 effect. So this is not an absolute veto 12 power on the part of the TAC. 13 But, as I say, the 14 plaintiffs bar and their clients have a 15 general feeling that their personal 16 medical information shouldn't be 17 indiscriminately disseminated to anybody 18 who says they have a desire to do so -- 19 excuse me -- to use it for whatever 20 purposes they may wish to use it. 21 Q. I want to turn your 22 attention now to Section 5.5. 23 A. Of the Trust Agreement? 24 Q. Yes.</p>
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<p>1 applicable obligation under an insurance 2 policy or settlement agreement within the 3 Asbestos Insurance Policies or the 4 Asbestos Insurance Settlement Agreements; 5 provided...", and then it takes steps 6 reasonably feasible in its judgment to 7 preserve the further confidentiality of 8 such documents, et cetera. 9 That's the scope of this. 10 It basically has to do with the 11 confidentiality of medical information 12 and personal information that's submitted 13 in claims files. 14 Q. So if an insurance company 15 wants to see that information because the 16 Trust is seeking recovery under an 17 insurance policy for that claim, the 18 trustees need the consent of the TAC to 19 provide that information to the insurer; 20 is that correct? 21 A. Voluntarily. And, again, if 22 the TAC were to refuse to consent to it, 23 there is dispute resolution provisions. 24 The Trust could go to the bankruptcy</p>	<p>1 A. Okay. 2 Q. Now, there is a provision, 3 as I understand it, under the TDP 4 pursuant to which an asbestos PI claim 5 can resort to the tort system after going 6 through a bunch of hoops; is that 7 correct? 8 A. Correct. 9 Q. If the asbestos PI claimant 10 elects to do that, then I presume that 11 the Trust will have defense counsel to 12 defend that claim; is that correct? 13 A. One would assume that would 14 be the case. It's happened to 15 infrequently in practice that it's hard 16 to know, but I can't imagine that they 17 would defend themselves in court without 18 a lawyer. 19 Q. Okay. And would that lawyer 20 be a Trust professional as that term is 21 used in Section 5.5(a)? 22 MR. FINCH: 5.5(a) talks 23 about TAC employment of 24 professionals.</p>

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<p>1 THE WITNESS: But it also 2 talks about Trust professionals. 3 You would have to go back 4 and look at the definition of 5 Trust professional. 6 That's an interesting 7 question. I don't know whether 8 they would be considered to be a 9 Trust professional or not, 10 actually. 11 BY MR. BROWN: 12 Q. I don't think I can find a 13 definition of Trust professional. 14 A. It's in Section 4.8(a), the 15 fourth line. As a general proposition, 16 the Trust professionals are clearly 17 people who represent the Trust in a sort 18 of generalized sense, but it does include 19 counsel. Whether or not it would include 20 counsel in a particular case -- suffice 21 it to say that if the question is would 22 the TAC and members of the TAC have 23 access to the files of a counsel for the 24 Trust that was the defending case --</p>	<p>1 A. It says provided -- it says 2 "...complete access to all information 3 generated by them..." and it talks about 4 the TAC as a group. 5 An individual tort claim 6 would not be litigated by the TAC as a 7 group. At best, it would be litigated by 8 one of the TAC members. And the TAC 9 members -- I can't imagine the TAC 10 members saying, that as a group, we want 11 to find out how you are defending a 12 particular claim against did Trust so we 13 can give that information to the 14 plaintiff's lawyer that's part of our 15 group so we can help win the case. 16 I mean, it's just a 17 preposterous suggestion, quite frankly. 18 I mean, yeah, you are right, the document 19 doesn't prohibit that particular abuse of 20 fiduciary authority. But, you know, 21 documents generally don't hypothesize 22 every possible breach of fiduciary duty. 23 You could create a laundry list, 50 pages 24 long, of all of those possible abuses and</p>
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<p>1 Q. That's the question. 2 A. -- brought by the TAC's law 3 firm, the answer is no. 4 Q. Where does it say that? 5 A. It doesn't have to say that 6 because the TAC's role is a generic role. 7 It talks about the general administration 8 of the Trust, et cetera. 9 Asking for information about 10 an individual claim that that guy is 11 pursuing in a tort system against the 12 Trust has nothing to do with the general 13 administration of the Trust and would be 14 a blatant exercise in abuse of kind of 15 fiduciary power, and no trustee would 16 accept it. And I don't believe it would 17 ever cross the mind of any TAC member 18 that they could even try it, much less 19 succeed at it. 20 Q. But this provision does give 21 them complete access, correct, as 22 written? It says, "...complete access to 23 all information generated by them or 24 otherwise available to the PI Trust..."</p>	<p>1 say thou shall not commit each one of 2 them. 3 Q. Mr. Lockwood, I am correct, 4 am I not, that there was no asbestos 5 insurance entity that was involved in the 6 drafting of the Asbestos PI Agreement? 7 A. To the best of my knowledge, 8 that's correct. 9 Q. Let's turn to Plan 10 Exhibit-4. 11 A. I have it. 12 (Exhibit-11 marked for 13 identification at this time.) 14 THE WITNESS: Do you want me 15 to identify it? 16 MR. BROWN: Yes. 17 THE WITNESS: It's the Grace 18 Trust Distribution Procedures. 19 BY MR. BROWN: 20 Q. Okay. Now, no asbestos 21 insurance entity was invited to 22 participate in the drafting of the TDP, 23 correct? 24 A. To the best of my knowledge,</p>

1 that's correct.

2 **Q. And no asbestos insurance**
3 **entity was consulted about the terms of**
4 **it, correct?**

5 MS. HARDING: Object to
6 form.

7 MR. FINCH: Object to form.

8 THE WITNESS: At one level,
9 that's certainly true. I mean, I
10 will say that, in fact, I believe
11 that there were -- because of the
12 process that we went through of
13 filing successive draft versions
14 of this, in effect, the insurer
15 saw earlier versions of the TDP,
16 indeed, I think have objected to
17 various provisions in them. And
18 those objections could be reviewed
19 as commenting on them. And then
20 there were filed amended versions
21 of them.

22 So to that extent, I guess,
23 they did have an opportunity to,
24 quote, comment on them, close

1 quote. But other than through the
2 process that I have just
3 described, no.

4 BY MR. BROWN:

5 **Q. Okay. The question was**
6 **whether they were consulted concerning**
7 **them.**

8 A. Well, I understand that, and
9 sending you a -- serving a copy on you
10 and having you make an objection or file
11 some comment or argument in court could
12 be viewed at some level as consulting.

13 But, as I said, we didn't do
14 it other than in the manner that I just
15 described. If you don't think that's
16 consulting, that's fine.

17 **Q. And no asbestos insurance**
18 **entity consented in writing or orally to**
19 **the terms of the TDP, correct?**

20 MS. HARDING: Object to
21 form.

22 MR. FINCH: Object to form.

23 THE WITNESS: Except for
24 Equitas and KWELM in the manner

1 that I described earlier in my
2 deposition. That's as far as I
3 know, correct.

4 BY MR. BROWN:

5 **Q. Okay. Did any asbestos**
6 **insurance entity play any role in the**
7 **establishment of a medical criteria in**
8 **the TDP?**

9 MS. HARDING: Object to the
10 form.

11 THE WITNESS: Not to my
12 knowledge.

13 BY MR. BROWN:

14 **Q. How about the exposure**
15 **criteria?**

16 A. Same answer.

17 **Q. How about the claims**
18 **resolution process?**

19 A. Same answer.

20 **Q. How about any other term in**
21 **the TDP?**

22 MR. FINCH: Object to form,
23 overly broad.

24 THE WITNESS: Again, the

1 only role that was played was --
2 well, let me back up a second.
3 This TDP is in most particulars
4 similar, if not identical, to TDPs
5 that have been adopted in prior
6 asbestos bankruptcy cases.

7 In many of those cases, the
8 same insurers have objected to the
9 same provisions of the TDPs that
10 they object to now. And in some
11 cases, over time the TDPs have
12 actually been modified and,
13 indeed, in some cases, some of the
14 provisions that we talked about,
15 like the one relating to providing
16 access for insurance coverage, I
17 believe was put into a TDP along
18 the way, not this one for the
19 first time, but some earlier TDP,
20 because it became apparent that
21 that was going to be needed to
22 deal with insurance problems.

23 And to that extent, the
24 insurers, as a result of this

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<p>1 cumulative iteration process, have 2 had that sort of a role. 3 Obviously, that's not the kind of 4 role you have in mind. The kind 5 of role you have in mind is coming 6 to you and saying we want to 7 negotiate about it, we want to get 8 your agreement to it, we want to 9 get your approval of it. And that 10 sort of a role, to my knowledge, 11 you didn't have on this TDP. 12 BY MR. BROWN: 13 Q. All right. Under this TDP, 14 is there any role for any asbestos 15 insurance entity -- 16 A. In -- 17 Q. Well, I hadn't finished. 18 A. Sorry. 19 Q. -- in connection with any of 20 the claims resolution processes? 21 A. Well, you yourself 22 identified one a few questions back, 23 which is if the claimant doesn't settle 24 its claim with the Trust, brings the</p>	<p>1 was to allow insurers to handle the 2 claims, they would have to right under 3 this document and the Trust Agreement 4 with the consent of the TAC and the FCR 5 to amend it to give the insurers a right. 6 But, in its present form, there is no 7 express provision involving the insurers 8 in the claims resolution process. 9 Q. And that's true for the 10 expedited review, individual review, and 11 arbitration, correct? 12 A. It's certainly true of the 13 expedited review and individual review. 14 It's an interesting question whether or 15 not the Trust could tender a claim for 16 arbitration to an insurer. I don't know 17 whether there is anything that would 18 prohibit them from doing that. 19 Arbitration is, to some 20 extent, like litigation, and they could 21 certainly tender a claim for an insurer, 22 a litigation claim to an insurer. They 23 might be able to. I don't know of 24 anything that would preclude them, I</p>
Page 231	Page 233
<p>1 claim against the Trust in the tort 2 system, and the Trust has to defend it. 3 It is certainly within the contemplation 4 of these documents that the Trust could 5 tender that defense in that claim to an 6 insurer. 7 Q. Okay. 8 A. And that would be where the 9 Trust -- while it doesn't spell that out 10 in here, that would certainly be a place 11 where an insurer might have an 12 involvement. 13 Beyond that, there is 14 nothing in the Trust that expressly 15 addresses any participation by insurers 16 in the claims resolution process. 17 That said, if some coverage 18 court decides that the insurers have the 19 right to participate in the claims 20 resolution process, the TDP has amendment 21 procedures in it, and the trustees might 22 very well conclude that if the only way 23 they could get access in the future to a 24 lot of valuable assigned insurance rights</p>	<p>1 guess, from tendering it to an insurer 2 for arbitration. I don't know. 3 Q. But the TDP doesn't spell 4 out any role? 5 A. The TDP doesn't spell it 6 out, no. 7 Q. Let's go to Section 2.6. 8 A. Of which document? 9 Q. Trust Distribution 10 Procedures, ACC-11. 11 A. Okay. 12 Q. Now, the first question I 13 have, that refers to indirect PI Trust 14 claims? 15 A. Correct. 16 Q. There is in Section 5.12 and 17 5.13 a couple of other terms that are 18 used. In 5.12, the term "insurer-related 19 TDP claims" is used. 20 A. Correct. 21 Q. In 5.13, the term 22 "indemnified insurer TDP claims" is used. 23 And my first question is 24 whether those two terms are included</p>

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Monday, May 4, 2009

- - -

Continuation of oral
deposition of PETER VAN N. LOCKWOOD,
ESQUIRE, taken pursuant to notice, was
held at the offices of CAPLIN & DRYSDALE,
One Thomas Circle N.W., Suite 1100,
Washington, DC 20005, commencing at
12:05 p.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -

MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

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4 (Pages 458 to 461)

Page 458		Page 460	
1	- - -	1	- - -
2	I N D E X	2	PETER VAN N. LOCKWOOD,
3	- - -	3	ESQUIRE, after having been first
4		4	duly sworn, was examined and
5	Testimony of:	5	testified as follows:
6	PETER VAN N. LOCKWOOD, ESQUIRE	6	- - -
7		7	PROCEEDINGS
8	By Mr. Cohn Page 462	8	- - -
9	By Mr. Wisler Page 531	9	(ACC 30(b)(6)-17 and 18
10	By Mr. Mangan Page 544	10	premarked for identification at
11	By Ms. Casey Page 549	11	this time.)
12	By Mr. Speights Page 563	12	- - -
13	By Mr. Plevin Page 606	13	MR. COHN: Go ahead,
14	By Mr. Schiavoni Page 624	14	Mr. Schiavoni.
15	By Mr. Brown Page 636	15	MR. SCHIAVONI: I just
16		16	wanted to object. We have written
17	- - -	17	the Libby claimants separately
18	E X H I B I T S	18	about this, but we object to them
19	- - -	19	doing any questioning of
20	NO. DESCRIPTION PAGE	20	Mr. Lockwood on the grounds that
21	17 Notice of Deposition of	21	the Libby claimants are members of
22	Asbestos PI Committee Pursuant	22	the committee; they have not
23	to Rule 30(b)(6) 460	23	objected to Mr. Lockwood's
24	18 Exhibit 8 to Exhibit Book 460	24	designation to testify on behalf
	- - -		
Page 459		Page 461	
1	- - -	1	of the committee; nor have they
2	D E P O S I T I O N S U P P O R T I N D E X	2	offered in response to requests
3	- - -	3	any alternative witness to testify
4		4	on any topics on which they
5	Direction to Witness Not to Answer:	5	disagree with Mr. Lockwood.
6	Page Line Page Line	6	We see Mr. Lockwood's
7	620 11 632 14	7	testimony and the failure of the
8		8	Libby claimants to object to the
9		9	designation of Mr. Lockwood as an
10	Request for Production of Documents:	10	adoptive omission by the Libby
11	Page Line Page Line	11	claimants, and we object to any
12	NONE	12	questioning by them as essentially
13		13	questioning seeking to impeach
14		14	their own witness. Thank you.
15	Stipulations:	15	MR. COHN: You are welcome.
16	Page Line Page Line	16	We will respond to your
17	12 02	17	correspondence, but, for the
18	(Previously)	18	moment, let's simply say that we
19		19	reject the basis for your
20	Area(s) Marked Confidential:	20	objection.
21	Page Line Page Line	21	MR. SCHIAVONI: If there are
22	NONE	22	any topics that the Libby
23		23	claimants object to Mr. Lockwood's
24		24	designation on, we need to know

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1 what those topics are before this
2 deposition is completed so we can
3 question on those topics.

4 MR. COHN: So far as the
5 Libby claimants are aware,
6 Mr. Lockwood has been properly
7 designated as the spokesman for
8 the Asbestos PI Committee as an
9 entity.

10 So with that, why don't we
11 start.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. COHN:

16 Q. We didn't do this last time,
17 so let me hand you what has been marked
18 as ACC 30(b)(6) Exhibit-17 and ask
19 whether you recognize it.

20 A. I do.

21 Q. And what is it?

22 A. It's a Notice of Deposition
23 of the ACC by the Libby claimants.

24 Q. Okay. And that's a

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1 deposition under Rule 30(b)(6)?

2 A. Correct.

3 Q. And you are the person who
4 has been designated by the Asbestos
5 Claimants Committee to appear on behalf
6 of the committee?

7 A. To my great good fortune,
8 yes.

9 Q. Okay. Now, this deposition
10 was begun on Friday, May 1st; is that
11 correct?

12 A. Yes.

13 Q. And we suspended at about
14 7:45 in the evening?

15 A. As best I can recall, that
16 seems about right.

17 Q. Since that time, have you
18 spoken with your counsel at all?

19 A. Do you mean Mr. Finch?

20 Q. Or any of the lawyers
21 representing you?

22 A. Well, Mr. Finch and I were
23 on a conference call this morning on
24 matters wholly unrelated to this case. I

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1 haven't discussed my testimony with him,
2 if that's what you are inquiring about.

3 Q. Yes. The next question
4 would be whether you have discussed
5 either the testimony that you have given
6 or the testimony that you are going to
7 give in this deposition.

8 A. I have not discussed that
9 with anybody --

10 Q. Okay.

11 A. -- since Friday, which, I
12 guess, was your question.

13 Q. That was the question.

14 All right. Is it the case
15 that any asbestos PI claimant may elect
16 individual review of his claim?

17 MS. BAIER: Objection to
18 form. Basis? What are you
19 talking about, in the world?

20 MR. COHN: Okay. Let me
21 start again.

22 BY MR. COHN:

23 Q. Let me refer you to the TDP,
24 which has been marked as ACC Exhibit-11.

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1 A. I have it.

2 Q. And ask you under the TDP
3 whether any asbestos PI claimant may
4 elect individual review of his claim?

5 A. As best I can recall,
6 assuming the claimant has not previously
7 elected expedited review and subject to
8 the provisions relating to expedited
9 review, the answer to that question is
10 yes. There are specific provisions in
11 the TDP that address individual review
12 and how it's to be elected and how it's
13 to proceed.

14 Q. And when a claimant properly
15 in accordance with the TDP elects
16 individual review, what happens next?

17 A. Well, that depends, frankly,
18 on how the trustees after consummation of
19 the Plan proceed to establish the claims
20 handling or resolution facility. As of
21 right now, the Grace Trust doesn't exist,
22 doesn't have claims handling facility,
23 and, therefore, there is no specific set
24 of personnel or internal procedures that

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1 have yet been created for the mechanical
2 process of claims review.

3 **Q. Based on how similar trusts**
4 **have functioned in other cases, how would**
5 **you expect the Asbestos PI Trust to go**
6 **about the process of deciding what offer**
7 **to make on individual review?**

8 MR. FINCH: Objection, form,
9 foundation.

10 You can answer.

11 THE WITNESS: I do not have
12 enough personal experience with
13 the actual practices of other
14 asbestos trusts to answer that
15 question.

16 It is possible Mr. Inselbuch
17 might be able to better answer
18 that question, although, to some
19 extent, what you are asking for is
20 speculation, because at the end of
21 the day, it's the trustees that
22 will decide how the Trust proceeds
23 to handle claims and not me,
24 Mr. Inselbuch, or the committee

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1 be able to give you a somewhat
2 more informed answer.

3 But my understanding of the
4 TDP is that the criteria that you
5 are referring to, which are set
6 forth in Section 5.3(a)(3) are, as
7 a general proposition, applicable
8 to what's called the expedited
9 review process.

10 And, by hypothesis, if you
11 are talking about individual
12 review, you are talking about
13 somebody who is not elected
14 expedited review. And it's my
15 understanding that, again, subject
16 to the specific provisions of the
17 TDP on this, that the trustees can
18 determine to liquidate and pay any
19 claim that they believe based on
20 whatever process they undertake,
21 would be legitimately compensable
22 under applicable state or federal
23 nonbankruptcy law.

24 BY MR. COHN:

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1 beyond what is set forth in the
2 TDP itself.

3 BY MR. COHN:

4 **Q. All right. Referring,**
5 **again, to Exhibit-11, if a person does**
6 **not fit the medical criteria for a**
7 **particular disease category set forth in**
8 **Section 5.3(a)(3), does the Trust have**
9 **discretion to allow the claim in that**
10 **category anyway?**

11 MR. FINCH: Objection to
12 form and to the word "allow."

13 MR. COHN: Then why don't I
14 rephrase that.

15 BY MR. COHN:

16 **Q. Referring to the TDP, if a**
17 **person doesn't fit the medical criteria**
18 **for a particular disease category set**
19 **forth in Section 5.3(a)(3), does the**
20 **Trust have discretion to liquidate the**
21 **claim as a claim in that category?**

22 MR. FINCH: Object to form.

23 THE WITNESS: Again, this is
24 something that Mr. Inselbuch might

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1 **Q. So failure to meet any**
2 **particular medical criterion that would**
3 **be required to have a claim allowed by**
4 **expedited review -- I didn't mean**
5 **allow -- I mean liquidated expedited**
6 **review would not be fatal to liquidating**
7 **the claim in that category upon**
8 **individual review?**

9 A. That's my understanding,
10 yes.

11 **Q. So, specifically, may the**
12 **Trust choose to liquidate a claim for**
13 **severe disabling pleural disease at the**
14 **level of compensation provided for claims**
15 **for severe disabling pleural disease even**
16 **though the claimant does not have**
17 **blunting of the costophrenic angle?**

18 MR. FINCH: Object to form.

19 THE WITNESS: That is a very
20 compound question, because you
21 started talking about the value.
22 The values, just like the other
23 criteria, are set in the expedited
24 review errors. Individual review

Page 634	Page 636
<p>1 the same position and give the 2 same instruction. 3 If you ask about questions 4 that Libby claimants have taken in 5 papers filed in the court, for 6 example, in a Disclosure Statement 7 objections and the bullet point 8 Plan objections and the 9 committee's responses made to that 10 in open court, I will permit 11 Mr. Lockwood certainly to answer 12 those questions. 13 But anything that gets into 14 communications with between the 15 Libby claimants with the rest of 16 the ACC or counsel for the ACC 17 about their respective views of 18 insurance coverage, I am going to 19 take the position as privileged. 20 And so I think you have to 21 do it on a question-by-question 22 basis, but that's my general 23 position. 24 BY MR. SCHIAVONI:</p>	<p>1 you have follow-up until we run 2 out of time. 3 (There was a discussion held 4 off the record at this time.) 5 (There was a break from 3:55 6 p.m. to 4:03 p.m.) 7 - - - 8 EXAMINATION 9 - - - 10 BY MR. BROWN: 11 Q. Mr. Lockwood, just a couple 12 of follow-ups. The court reporter is 13 actually going to read back a question 14 and answer. I think it's probably easier 15 to do that, and then I will ask my 16 follow-up question. It was end of 17 Mr. Wisler's questioning of you. 18 A. Okay. 19 (The reporter read from the 20 record as requested.) 21 BY MR. BROWN: 22 Q. And after that, 23 Mr. Lockwood, Mr. Wisler asked you a 24 follow-up as to what type of claim it</p>
Page 635	Page 637
<p>1 Q. Okay. Mr. Lockwood, I just 2 have one other brief topic. And here is 3 the first question on that: Does the 4 Plan purport to release claims that may 5 exist between insurers and Non-Debtors? 6 MR. FINCH: Objection, form, 7 broad, vague. 8 THE WITNESS: Phrased as 9 broadly as you have, I think the 10 answer is yes. 11 MR. SCHIAVONI: Okay. Thank 12 you. I have no further questions. 13 MR. FINCH: Is there anyone 14 else in the room who has 15 questions? 16 MR. BROWN: I have some 17 follow-ups. 18 MR. FINCH: Is there anyone 19 else on the telephone who has not 20 asked questions yet who has 21 questions? 22 (No response.) 23 MR. FINCH: Hearing no 24 affirmative response, I will let</p>	<p>1 would be. 2 And is it correct that the 3 ACC does not have a position on what type 4 of claim it would be if it's not a Class 5 6 claim? 6 A. Well, the ACC doesn't, as 7 such, have positions on hypothetical 8 questions. So, yes, the ACC doesn't have 9 a position on that issue. The ACC -- 10 well, I will leave it at that. 11 Q. On Friday, Mr. Cohn asked 12 you a question, who drafted the TDP. 13 That was the question, and you gave an 14 answer which I am happy to show you the 15 full answer. But I WANT to repeat a 16 portion of your answer. You said: "The 17 participants that did it were basically 18 counsel for the ACC, counsel for the FCR, 19 and members of the ACC itself in terms of 20 reviewing and commenting on things, and 21 the FCR himself." 22 When you said the ACC 23 itself, what did you mean? 24 A. I meant --</p>

1 **Q. I am sorry. When you said**
 2 **members of the ACC itself, what members**
 3 **are you talking about?**

4 A. Well, I was referring to the
 5 personal injury counsel who were the
 6 delegated representatives of the
 7 individual ACC members, if that's what
 8 you are driving at.

9 **Q. That's what I am driving at.**
 10 **And who specifically were**
 11 **they?**

12 A. As far as I know -- well,
 13 the way in which the process works, in
 14 general, is sometimes the ACC has
 15 in-person meetings, sometimes it has
 16 telephonic meetings, sometimes documents
 17 get sent to it by email as PDF
 18 attachments or whatever, and the ACC has
 19 asked do you want to have a meeting or is
 20 this good enough for you. So there is a
 21 variety of ways in which the ACC views an
 22 input as obtained.

23 And my answer was simply
 24 that at the conclusion of a process, the

1 members of the ACC had weighed in in one
 2 or more of the ways in which I had
 3 described some of them had; they all had
 4 the opportunity to express their views;
 5 and, therefore, the final product was the
 6 product of their input. And there was a
 7 final vote to go forward with the
 8 document.

9 **Q. Okay. And when you say the**
 10 **members, you are talking about their**
 11 **actual personal injury counsel?**

12 A. As far as I know. But,
 13 again, I couldn't tell you whether an
 14 individual personal injury lawyer might
 15 have consulted with his client, the
 16 member, on one or more aspects of the TDP
 17 or, for that matter, even sent the client
 18 a copy of the entire TDP and had a
 19 discussion with him about it. I
 20 certainly couldn't exclude that.

21 **Q. Can you tell me the list of**
 22 **counsel that you are talking about, the**
 23 **actual names?**

24 A. They would be -- as a

1 general proposition, I believe they are
 2 in the Disclosure Statement. If they
 3 are, it's a hell of a lot better
 4 description of them than my memory. I
 5 just --

6 MR. FINCH: There is also an
 7 order entered by the U.S. Trustee
 8 that identifies the 11 individual
 9 members of the ACC and their
 10 counsel, care of their firms.

11 BY MR. BROWN:

12 **Q. That's what I am driving at.**
 13 **I would like to know who the individuals**
 14 **were at their firms that were involved.**

15 A. Well, let me just see. I am
 16 somewhat surprised. The Disclosure
 17 Statement does not appear to contain the
 18 members of the ACC. It just lists the
 19 counsel representing the committee as a
 20 whole. I had misremembered. I had
 21 thought that it did.

22 I can't really remember. I
 23 mean, I know the four -- I identified
 24 four earlier as being involved in the

1 discussions with Grace. They are
 2 included. I think there is at least nine
 3 members of the ACC. I do not recall, as
 4 I sit here, who the other five members of
 5 the ACC are. I mean, they are of
 6 record -- strike that. I do not recall
 7 who the other five lawyers for the
 8 members of the ACC are. They are of
 9 record.

10 **Q. But the four to which you**
 11 **are referring is Mr. Budd, Mr. Rice,**
 12 **Mr. Cooney, and Mr. Weitz?**

13 A. Correct.

14 **Q. You were talking about the**
 15 **Trust Distribution Procedures and who**
 16 **drafted them.**

17 **Would your answer be the**
 18 **same with respect to the Trust Agreement?**

19 A. On the Trust Agreement, I
 20 think there was more input from Grace,
 21 and, indeed, I think there may have been
 22 some from counsel from Sealed Air, as I
 23 think about it. And, indeed, now that I
 24 think about it, I think there may have

Page 642	Page 644
<p>1 even been a little input from the Sealed 2 Air counsel on the TDP. But, again, the 3 primary draftspersons were counsel for 4 the ACC and the FCR.</p> <p>5 Q. Okay. Can I direct your 6 attention to the Plan, which I guess is 7 ACC-5, and specifically it's page 70 on 8 my copy. It's under Section 7.7 9 Conditions to Occurrence of the 10 Confirmation Date, specifically condition 11 (j).</p> <p>12 A. I see it.</p> <p>13 Q. Can you just take a moment 14 to read that? I have one question on 15 that.</p> <p>16 A. I have read it.</p> <p>17 Q. In the portion of that 18 condition dealing with asbestos PD 19 claims, second-to-the last line, you will 20 see the words "if any" appear there, but 21 the same language doesn't appear for 22 asbestos PI claims.</p> <p>23 Why? 24 MR. FINCH: Objection,</p>	<p>1 demands, or if there are, they 2 will be valid.</p> <p>3 MR. BROWN: Okay. That's 4 all I have.</p> <p>5 MR. FINCH: Could you go 6 back to the question I asked you 7 to find and read that question and 8 read the answer, and I will see if 9 I have got any redirect.</p> <p>10 Does anybody else have any 11 questions?</p> <p>12 (No response.)</p> <p>13 MR. FINCH: Hearing none, 14 let me just hear that back.</p> <p>15 (The reporter read from the 16 record as requested.)</p> <p>17 MR. FINCH: No questions. 18 I think that is the end of 19 the deposition.</p> <p>20 (The deposition concluded at 21 4:19 p.m.) 22 23 24</p>
Page 643	Page 645
<p>1 foundation.</p> <p>2 THE WITNESS: I need to talk 3 to my counsel about this one.</p> <p>4 (There was a discussion held 5 off the record between the witness 6 and counsel at this time.)</p> <p>7 MR. FINCH: The discussion 8 was with respect to whether I need 9 to instruct him not to answer the 10 question. He is allowed to answer 11 the question as long as doing so 12 doesn't reveal privileged 13 communication.</p> <p>14 I think you can answer.</p> <p>15 THE WITNESS: Barely.</p> <p>16 The "if any" is in there, as 17 best I can recall, because the 18 Plan proponents -- in contrast of 19 PI, "if any" is under PD. Because 20 the Plan proponents are quite 21 confident that there is going to 22 be lots of future PI demands and 23 are less confident that there is 24 going to be lots of future PD</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3</p> <p>4 I HEREBY CERTIFY that the witness 5 was duly sworn by me and that the 6 deposition is a true record of the 7 testimony given by the witness.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 _____ 14 Lori A. Zabielski 15 Registered Professional Reporter 16 Dated: May 5, 2009 17</p> <p>18</p> <p>19</p> <p>20 (The foregoing certification 21 of this transcript does not apply to any 22 reproduction of the same by any means, 23 unless under the direct control and/or 24 supervision of the certifying reporter.)</p>

51 (Pages 646 to 649)

Page 646

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

Page 648

ACKNOWLEDGEMENT OF DEPONENT

I, _____, do hereby certify that I have read the foregoing pages, 1- PGS, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the correction or changes in form or substance, if any, noted in the attached Errata Sheet.

WITNESS NAME DATE

Subscribed and sworn to before me this _____ day of _____, 20____.
My commission expires: _____.

Notary Public

Page 647

ERRATA

PAGE LINE CHANGE

Page 649

LAWYER'S NOTES

PAGE LINE

ACKNOWLEDGEMENT OF DEPONENT

1
2 I, Peter Van N. Lockwood, do
3 hereby certify that I have read the
4 foregoing pages, 1- PGS, and that
5 the same is a correct transcription of
6 the answers given by me to the questions
7 therein propounded, except for the
8 correction or changes in form or
9 substance, if any, noted in the attached
10 Errata Sheet.

WITNESS NAME

DATE

Subscribed and sworn

18 to before me this

19 1st day of June, 2009.

20 My commission expires:

Jeanne G. Katz
Notary Public, District of Columbia
My Commission Expires 12/14/2012

Notary Public

1 - - - - -

2 E R R A T A

3 - - - - -

4 PAGE LINE CHANGE

5 17 5 "to" to "to be"

6 17 21 "here in" to "herein"

7 21 21 "are" to "are not"

8 37 16 "is" to "are"

9 38 10 "My" to "When I"

10 41 12 "representative" to "representatives"

11 69 21-22 "combuston engineering" to "Combustion Engineering"

12 80 13 "pre-petitioned" to "pre-petition"

13 80 22 "consultancy and cleaning" to "Consultancy and Cleaning"

14 82 2 "alterego" to "alter ego"

15 84 18 "178" to "Definition 178"

16 84 21 "insurers" to "insureds"

17 85 15 "punitive" to "putative"

18 90 7 "the" to "an"

19 96 19 "engineering" to "Engineering"

20 98 1 "is" to "are"

21 98 19-20 "and insurance protection" to "any insurance injunction"

22 100 14 "is" to "in"

23 104 18 "or" to "or its"

24 107 13 "-vie" to "-vis"

1 - - - - -

2 E R R A T A

3 - - - - -

4 PAGE LINE CHANGE

5 111 20 delete "or"

6 112 2 "cutoff" to "cut off"

7 115 12 "is" to "are"

8 117 24 "C363B" to "section 363(b)"

9 118 3 "you" to "you've"

10 118 8 "have" to "to have"

11 119 24 "in" to "an"

12 131 24 "gratuitous" to "gratuitous benefit to"

13 134 14 "indirectly" to "indirect"

14 142 16 "transfers" to "transfer"

15 143 1 "adjoining" to "enjoining"

16 158 9 "does" to "the"

17 171 6+11 "pace" to "pes"

18 178 11 "channel" to "channeled"

19 178 12 "Trust" to "Trust claims"

20 183 4 "an all set" to "a null set"

21 192 5 "of" to "or"

22 193 5 "we" to "they"

23 194 3 "claims" to "policies"

24 205 16 "it finds" to "they find"

1 - - - - -

2 E R R A T A

3 - - - - -

4	PAGE	LINE	CHANGE
5	220	3	"trusts by the Trust" to "trusts, by the trust"
6	220	10	"Trust" to "court"
7	223	19	delete "skied"
8	224	12	"did" to "the"
9	226	14	"insurer" to "insurers"
10	226	18	"reviewed" to "viewed"
11	232	2	"to" to "the"
12	238	17	"PI" to "indirect PI"
13	244	13	delete "is"
14	249	13	"liability is" to "liabilities"
15	250	5	"omission" to "admission"
16	258	24	delete "it"
17	266	12	delete "a"
18	266	22	insert "The" after "worded."
19	267	12	"-vie" to "-vis"
20	269	19	"Pi" to "PI"
21	270	11	"evaluate" to "evaluates"
22	272	7	"the fact of law" to "fact and law"
23	272	14	delete "of"
24	272	21	insert "were" before "in force"

1 - - - - -

2 E R R A T A

3 - - - - -

4 PAGE LINE CHANGE

5 279 5 "sure that" to "sure"

6 279 6 "subject," to "subject,"

7 288 8 "Grace's had" to "Grace's, had"

8 289 8 insert "Grace" before "has"

9 294 24 delete "position"

10 297 1 "IN" to "In"

11 297 6 "rights" to "right"

12 297 16 "gray" to "grace"

13 308 3 "agreement" to "agreements"

14 310 8 "injunction, It" to "injunction it"

15 310 11 "then" to "than"

16 324 13 insert "that" before "are"

17 338 1 "COBB" to "FINCH"

18 346 18 insert "it" before "depends"

19 361 20 "table" to "liability"

20 366 2 "punitive" to "putative"

21 368 6 "a Payne" to "obtaining"

22 377 7 "pre-filed" to "previously filed"

23 379 8 "is" to "are"

24 385 21 "committees" to "committee's"

1	-	-	-	-	-	-
2			E	R	R	A
3			-	-	-	-
4	PAGE	LINE	CHANGE			
5	388	2'	"history" to "historical"			
6	402	12	"about" to "with"			
7	403	24	delete "for"			
8	416	3	"entitled" to "entitle"			
9	416	8	"or" to "on"			
10	419	3	"to" to "at"			
11	419	23-24	"in all" to "a null"			
12	425	18	"Indiana" to "Inselbuch"			
13	425	20	"arguably" to "arguable"			
14	435	9	"met" to "me"			
15	468	13	"is" to "has"			
16	469	24	"errors" to "criteria"			
17	471	8	"pressed" to "met"			
18	472	13	"to" to "of"			
19	491	16	"respected" to "respective"			
20	491	17	"conference" to "categories"			
21	492	8	"obtain" to "obtained"			
22	493	19	omit "by" to "from"			
23	526	22	"combustion engineering" to "Combustion Engineering"			
24	535	9	insert "a" after "go"			

E R R A T A

4	PAGE	LINE	CHANGE
5	536	8	"exercise" to "excise"
6	539	23	"claim that" to "claims, that"
7	539	24	"exhaustion" to "exhausted"
8	546	17	delete "as" after "by"
9	550	6	"at that name insurer" to "named insured"
10	551	1-2	delete "be in" before "BNSF"
11	554	11	"turn, Have" to "turn have"
12	557	16	insert "by" before "hypothesis"
13	559	24	"present" to "presenting"
14	572	9	insert "we" after "what"
15	581	15	insert "of" after "Plan"
16	588	6	"have" to "as"
17	594	8	insert "to" before "deal"
18	614	17	"adjudicata" to "judicata"
19	626	11	"an" to "a"
20	633	10	insert "of" before "my"
21	633	21	"THE WITNESS" to "MR. FINCH"
22	634	3	"questions" to "positions"
23	638	18	insert "been" after "has"
24	644	1	"are;" to "are, that"